

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

E.S.,

Petitioner,

v.

WESTSIDE REGIONAL CENTER,

Respondent.

OAH No. 2012080336

[California Early Intervention Services Act,  
Government Code section 95000 et seq.]

**DECISION**

Daniel Juárez, Administrative Law Judge, Office of Administrative Hearings, heard this matter on August 29, 2012, in Culver City, California.

E.S. (Petitioner) was represented by his father.<sup>1</sup> Petitioner was not present.

Erin Fox, Esq., Fair Hearing Consultant, represented the Westside Regional Center (Respondent).

The parties submitted the matter for decision on August 29, 2012.

**STATEMENT OF THE CASE**

The question in this matter is whether Respondent should fund two hours per week of speech therapy for Petitioner.

Petitioner contends that he requires two hours per week of speech therapy to address his disability-related needs.

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<sup>1</sup> Petitioner's surname is reduced to initials and his representative is referred to by familial title to preserve Petitioner's confidentiality.

Respondent contends that two hours per week of speech therapy is inappropriate for Petitioner because any additional services to his weekly regimen would overwhelm his tolerance and thus be ineffective.

## FACTUAL FINDINGS

1. Petitioner is a two-year-old boy. He receives Early Start services due to global developmental delays from birth trauma and pre-mature birth.

2. Respondent funds Petitioner's participation in a language enriched center-based pre-school program (the center-based program) five days per week, three hours per day.<sup>2</sup> Respondent also funds two hours per week of occupational therapy and one hour per week of individual speech therapy. The center-based program addresses Petitioner's overall social and developmental deficits with a focus on speech and language.

3. On a date undetermined by the evidence, Petitioner's father requested an increase in Respondent's funding to cover one additional hour per week of individual speech therapy. Respondent denied Petitioner's request, but alternatively proposed to increase Petitioner's speech therapy, as Petitioner requests, only if Petitioner would agree to decrease the center-based program services from five days per week to four days per week.

4. Respondent argued that increasing Petitioner's speech therapy by one hour per week would not be appropriate because such an increase, while maintaining the center-based program at five days per week, in addition to his other therapies, is more than is clinically and developmentally appropriate for Petitioner. At hearing, Respondent pointed to the evaluation of LeeAnn Roca (Roca), Petitioner's current speech and language therapy provider, who opines that Petitioner is not making sufficient speech and language progress in the center-based program. On this basis, Respondent argued that increasing individual speech and language therapy, while maintaining the language enriched center based program, would be ineffective and inappropriate.

5. Roca is a licensed speech and language pathologist who has been providing Petitioner his speech and language services since May 2012. According to Roca's undated Progress Report, offered by Respondent, Roca described Petitioner as someone who has "mad[e] minimal progress due to the limited intensity of his [speech and language] services. He does not naturally gain speech and language skills from his environment, and the time lapse between sessions hinders the continuity of the service." Roca recommended that Petitioner receive two hours per week of speech and language services.

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<sup>2</sup> The hours of the center-based program were increased from three days per week to five days per week by order of an administrative law judge in an earlier, unrelated administrative hearing held in June 2012 (OAH case number 2012051144).

6. In a separate letter from Roca, offered by Petitioner, Roca opined that Petitioner “requires a more direct and intense speech therapy approach to retain current skills and to stimulate attempts to communicate verbally.” Roca wrote, “He [Petitioner] is now attending five days per week of a center-based program, however, this language enriched program does not give [Petitioner] the one-to-one attention needed to increase his oral motor development for sound production, the constant repetition needed to promote verbal attempts, or the ‘wait time’ . . . required to allow [Petitioner] to process target sounds and words.”

7. Respondent argued that Roca’s statements support its position that the center-based program, albeit a language enriched program, does not meet Petitioner’s intensive speech and language needs and should therefore be reduced.

8. The evidence established that the center-based program addresses Petitioner’s social and developmental deficits.

9. The evidence did not establish that the center-based program fails to meet Petitioner’s overall social and developmental needs.

10. Linda Carlson, a licensed speech and language pathologist who works for Respondent testified at hearing. She supports Respondent’s position in this matter; however, Carlson has never met or evaluated Petitioner. Her opinion therefore merits little if any weight when compared to that of Roca’s opinion.

11. The evidence established that Petitioner requires two hours per week of speech and language therapy.

## LEGAL CONCLUSIONS

1. As Petitioner is requesting a service that Respondent is not currently providing him, Petitioner bears the burden of proof, by a preponderance of the evidence. (Evid. Code, §§ 115, 500.) Petitioner met his burden.

2. Government Code section 95004 states in part:

(a) Direct services for eligible infants and toddlers and their families shall be provided pursuant to the existing regional center system under the Lanterman Developmental Disabilities Services Act . . . .

(b)(1) In providing services under this title, regional centers shall comply with the Lanterman Developmental Disabilities Services Act . . . .

3. Welfare and Institutions Code section 4648, subdivision (a), provides that in order to meet and address a consumer's disability-related needs, the regional center shall secure "needed services and supports."

4. The evidence established that Petitioner requires two hours per week of speech therapy to meet his disability-related needs. Despite Respondent's position that brought into the forefront Petitioner's center-based program hours, whether Petitioner's time at the center-based program should be reduced was not an issue to be determined in this proceeding; nor was there sufficient evidence to make factual findings on that point (for example, there was no evidence of Petitioner's specific goals or overall progress at the center-based program). The evidence did establish that the center-based program addresses Petitioner's social and developmental deficits. As such, Respondent's position, offering the additional hour of speech therapy only if there was a reduction in Petitioner's center-based program, required analysis of a distinct service—the center-based program—with insufficient evidence that that program was ineffective overall. Respondent's position could therefore not be sustained.

5. Cause exists to grant Petitioner's appeal, as set forth in Factual Findings 1-11, and Legal Conclusions 1-4.

#### ORDER

Petitioner's appeal is granted.

Dated: September 7, 2011

/s/

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DANIEL JUAREZ  
Administrative Law Judge  
Office of Administrative Hearings